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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,823	01/07/2005	Hirohisa Tanaka	71465.00012	5058
57362	7590	06/15/2006		
			EXAMINER	
AKERMAN SENTERFITT			NGUYEN, CAM N	
801 PENNSYLVANIA AVENUE N.W.				
SUITE 600			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20004			1754	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/520,823	TANAKA ET AL.
	<b>Examiner</b> Cam N. Nguyen	<b>Art Unit</b> 1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03/28/06 (an amendment/response).  
2a)  This action is **FINAL**.                            2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,3-8,10-22 and 24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3-8,10-22 and 24 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All   b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/10/06.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### **Response to Amendment**

1. Applicants' amendment and remarks, filed March 28, 2006, has been made of record and entered. Claims 1, 3-5, 7-8, 10-11, 14, 16-19, & 21 have been amended. Claims 2, 9, & 23 have been canceled. Claim 24 has been added. Claims 1, 3-8, 10-22, & 24 are currently pending and under consideration.

### **Claim Rejections - 35 USC § 112 (Second Paragraph)**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 5 & 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 & 24 recite the limitation "a pre-crystallization composition" in line 6 and 4, respectively. There is insufficient antecedent basis for this limitation in the claims.

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3, 5, 7, 10-12, & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al., "hereinafter Abe", (US Pat. 5,439,865) taken together with Kaneko et al., "hereinafter Kaneko", (US Pat. 6,800,388 B2) or Monceaux et al., "hereinafter Monceaux", (US Pat. 5,622,680).

Abe discloses an exhaust gas catalyst, comprising: a heat-resistant inorganic carrier; a first catalyst layer loaded on said carrier, said first catalyst layer comprising a catalyst composition containing at least one noble metal selected from the group consisting of Pt and Pd, and active alumina, etc.; and a second catalyst layer loaded on said first catalyst layer, said second catalyst layer comprising a second catalyst composition containing active alumina and Rh loaded thereon, etc. (see col. 20, claim 11). Abe further discloses that the active alumina preferably contains a  $\theta$ -phase (see col. 6, ln 25-61).

Abe discloses the claimed catalyst, except for the perovskite-type composite oxide.

However, it would have been *prima facie obvious* to one of ordinary skill in the art at the time the invention was made to have incorporated by adding such known perovskite type composite oxide into the catalyst of Abe in order to achieve an improved catalyst, such as having high activity/selectivity which is capable of maintaining its high selectivity with the good stability even in the high temperature and oxygen sufficient atmosphere as taught by Kaneko and Monceux. Specifically, Kaneko and Monceux disclose the claimed perovskite composite oxide as follows.

Kaneko discloses a catalyst composition which comprises: a perovskite

composite oxide having the formula  $ABO_3$  and the formula  $A'_{1-x}A''_xB'_{1-y}B''_yO_3$ , wherein  $A'$  is La, Ce or both,  $A'$  is at least one element selected from the group consisting of La, Ca, Sm, Ce, Sr, Ba and Pr,  $B'$  is at least one element selected from the group consisting of Co, Fe, Mn and Gd, and  $B''$  is at least one element of noble metals, etc. (see col. 18, claim 1). See also Table 3 in col. 15 & 16.

Monceux discloses a catalyst containing an active phase of the perovskite-type structure having the general formula:  $L_xL'_{1-x}M_yM'_{z'}\Phi_{1-y-z}O_3$ , wherein L is an element selected from the lanthanides and the rare earth metals,  $L'$  is an element selected from Sr, Ca, Ba, Ce, K, Bi, Rb and Na, M is a transition metal selected from Cr, Mn, Fe, Co, Ni and Cu,  $M'$  is at least one metal selected from Pt, Ru, Pd, Rh, etc. (see col. 1, ln 40-57). See also Table II in col. 4, catalyst 9. The catalyst is deposited on a support and wherein the support is made of refractory material or metal (see col. 6, claims 4 & 5).

6. Claims 4, 6, 8, & 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al., "hereinafter Abe", (US Pat. 5,439,865) taken together with Kaneko et al., "hereinafter Kaneko", (US Pat. 6,800,388 B2) or Monceaux et al., "hereinafter Monceux", (US Pat. 5,622,680), as applied to claims 1, 3, 5, 7, 10-12, & 24 above, and in further view of Tan et al., "hereinafter Tan", (US Pat. 6,620,762 B2).

Abe discloses the claimed catalyst, except for the thermostable oxide.

It would have been *prima facie obvious* to one of ordinary skill in the art at the time the invention was made to have incorporated such known thermostable oxide into the catalyst of Abe in order to achieve a stable catalyst because it is known and taught

by Tan (see Tan at col. 15- col. 16, claim 4). See also Tan at col. 15- col. 16, claims 1-3 & 5-9.

**Response to Applicants' Arguments**

7. Applicants' response filed on March 28, 2006 has been fully considered, but not deemed persuasive for the following reasons.

Applicants urged that "there is no motivation provided in the references to pick and choose features of the references that are directed to solving different problems and to combine them" (applicants' response on page 13, first paragraph) is noted.

It is considered the rejections are still proper because there is a motivation to combine the teachings of the references together since (1) they are in the same field of art, which is catalysts for purification of exhaust gases, and (2) by combining such perovskite composite oxide of the secondary references into the catalyst of Abe, the catalyst obtained will have the advantages as disclosed by Monceux and Kaneko, such as high activity and selectivity, which is capable of maintaining its high selectivity with the good stability even in the high temperature and oxygen sufficient atmosphere (as discussed in the rejection above).

Applicants' urgings are not found persuasive because applicants did not provide a reason as to how the claimed catalyst composition is structurally different from the catalyst of the prior art. The Examiner has established a *prima facie* case of obviousness and provided that there is a reasonable expectation of success from such combination of teachings together. In order to overcome the rejection made, applicants

must provide good reasons or comparative data showing structurally different between the claimed catalyst composition and the disclosed catalyst composition, otherwise.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Conclusion**

9. Claims 1, 3-8, 10-22, & 24 are pending. Claims 1, 3-8, 10-22, & 24 are rejected. No claims are allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Cam N Nguyen, whose telephone

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number is 571-272-1357. The examiner can normally be reached on M, W, R, & F, 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CAM N. NGUYEN  
PRIMARY EXAMINER

Nguyen/cnn   
June 12, 2006

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